

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY

**Petition for Approval of the 2017 IPA
Procurement Plan pursuant to Section
16-111.5(d)(4) of the Public Utilities
Act**

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Docket No. 16-0453

**STAFF OF THE ILLINOIS COMMERCE COMMISSION
BRIEF ON EXCEPTIONS**

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BRIEF ON EXCEPTIONS**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Brief on Exceptions (“BOE”) in the above-captioned matter.

I. BACKGROUND

On September 27, 2016, the Illinois Power Agency (“IPA”) filed its Plan for the five year procurement planning period from June 2017 through May 2022 with the Illinois Commerce Commission (“Commission”) thereby initiating this docket.

On or about October 3, 2016, pursuant to Section 16-111.5(d)(3) of the Illinois Public Utilities Act (“PUA”), Staff and the following parties served on each other and filed Responses and/or Objections to the Plan:

Commonwealth Edison Company (“ComEd”),

Ameren Illinois Company (“Ameren Illinois,” “Ameren,” or “AIC”),

Environmental Law and Policy Center (“ELPC”),

MidAmerican Energy Company (“MEC” or “MidAmerican”),

Renewables Suppliers,¹

The People of the State of Illinois by Lisa Madigan, Attorney General (“AG”),
Exelon Generation Company, LLC (“Exelon”), and
the Natural Resources Defense Council (“NRDC”).

On October 5, 2016, the Chief Administrative Law Judge of the Commission provided notice that, “pursuant to Section 16-111.5(d)(3) of the Public Utilities Act, no hearing in the above-referenced matter is determined to be necessary.” (October 5, 2016, Notice of Chief Administrative Law Judge’s Ruling.) A Notice of Schedule and Notice of Administrative Law Judge’s Ruling (“ALJ”) provides for the filing of: Responses to Objections (“Response”) and Replies to Responses (“Reply”), due October 21, 2016 and October 31, 2016, respectively. (October 5, 2016, Notice of Schedule and Notice of Administrative Law Judge’s Ruling.) The ALJ’s schedule also provided for an ALJ’s Proposed Order (“ALJPO”), BOE and reply exceptions (“RBOE”), due November 14, 2016, November 21, 2016, and December 2, 2016, respectively.

On October 21, 2016, Staff and the following nine parties² served on each other and filed Responses:

IPA,

ComEd,

¹ The Renewables Suppliers are comprised of: EDP Renewables North America LLC and its affiliated project companies Meadow Lake Wind Farm I LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC and Blackstone Wind Farm LLC; Invenergy LLC and its affiliated project companies Grand Ridge Energy IV LLC, and Invenergy Illinois Solar; and NextEra Energy Resources, LLC and its subsidiary project company FPL Energy Illinois Wind, LLC. (Renewables Suppliers Objections, 1.)

² Putting aside the IPA and AG, all of the parties listed were granted intervention status on October 17, 2016 by the ALJ ruling except for: ISEA and ERC. On October 27, 2016, ISEA filed a petition to intervene. On October 19, 2016, the Board of Trustees of the University of Illinois filed a petition to intervene in this matter on behalf of ERC. On October 31, 2016, ISEA’s and ERC’s intervention was granted by the ALJ. (ALJ Ruling, October 31, 2016)

Ameren,
Renewables Suppliers,
ELPC,
AG,
NRDC,
the Illinois Solar Energy Association (“ISEA”), and
the Energy Resources Center at the University of Illinois at Chicago (“ERC”).

On October 31, 2016, Staff and the following parties served on each other and filed

Replies:

IPA,
ComEd,
Ameren,
Renewables Suppliers,
ELPC,
AG, and
NRDC.

On November 14, 2016, the ALJ issued the ALJPO. The ALJ set November 21, 2016 and December 2, 2016 for the filing of the BOE and RBOE, respectively. As set forth in Section II, Argument and Exceptions, Staff takes exception and offers certain modifications to the ALJPO pertaining to certain issues. Staff’s exceptions and supporting arguments follow.

II. ARGUMENT AND EXCEPTIONS

A. Exception 1, 2016 Workshop Consensus Items [Section 9.3]

Argument

Staff agrees with the ALJPO's decision to explicitly approve all of the consensus language contained in the 2016 SAG Report set forth in Appendix H to the 2017 Plan. (ALJPO, 40.) Staff recommends edits to the Staff's Position section and the Commission Analysis and Conclusion section in order to provide supporting rationale for adoption of the consensus language. Finally, Staff recommends the addition of language to clarify the applicability of adoption of the consensus language, consistent with the IPA's request.

Recommended Substitute Language

(ALJPO, 39.)

Staff's Position

Staff agrees that the Commission should adopt the 2016 Section 16-111.5B energy efficiency Consensus Items set forth in the 2016 SAG Report. Staff recommends that the Commission explicitly approve the broadly applicable Section 16-111.5B consensus language from the 2016 SAG Workshop Report that continues to be relevant beyond this docket and that is not reproduced in Section 9.3 of the Plan. Staff contends that Commission approval of the consensus items is useful as it provides guidelines to energy efficiency vendors and the utilities. Staff Cmnts. at 10-11.

(ALJPO, 40.)

Commission Analysis and Conclusion

All parties seem to agree that it is appropriate that the specific consensus items be included in the 2017 Plan. The Commission agrees with Staff that approval of the consensus items is useful as it provides guidelines to energy efficiency vendors and the utilities. The Commission adopts Ameren's second proposal and explicitly approves all the consensus language contained in Appendix H to the 2017 Plan – the 2016 SAG Report. The Commission adopts the IPA's request concerning applicability of the consensus language. In particular, the Commission explicitly approves the consensus language to be binding upon the energy efficiency

programs approved as part of the IPA's 2017 Plan for the planning of, implementation of, reporting on, and evaluation, measurement and verification of savings achieved by such programs, as well as binding upon parties up to the development of the IPA's 2018 Procurement Plan (at which time any changes to the consensus language may be considered).

B. Exception 2, Programs Deemed “Not Responsive to the RFP” by Ameren Illinois [Section 9.5.4] and Policy Implications [Section 9.5.4.1]

Argument

Staff and Ameren both are concerned about energy efficiency programs that are not primarily focused on electric savings. (Staff Objections, 14.) It is Staff's position that the IPA should procure energy efficiency measures that are predominantly justified based upon how the measures save electricity, reduce the overall costs of electric service, and compare to the prevailing cost of comparable supply. Id. (emphasis added) As set forth in the PUA, the principal issue in this docket involves a procurement plan for eligible retail customers of electric utilities. 220 ILCS 5/16-111.5(a). The Commission need only look to the caption of this docket to find the standard which applies to Commission approval of the IPA Plan. That standard, pursuant to Section 16-111.5(d)(4) is as follows:

[t]he Commission shall approve the procurement plan, including expressly the forecast used in the procurement plan, if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

220 ILCS 5/16-111.5(d)(4). (emphasis added) Clearly, the IPA Plan, among other things, is to ensure electric service at the lowest total cost. Pursuant to the PUA, procurement plans are to include the procurement of energy efficiency programs and measures. 220 ILCS 5/16-111.5B(a)(4). In addition, the PUA states that electric utilities are to provide the IPA with “[a]nalysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of

electric service.” 220 ILCS 5/16-111.5B(a)(3)(D). (emphasis added) While it is true that the Commission is to approve energy efficiency programs and measures if they are cost effective (220 ILCS 5/16-111.5B(a)(5)) (ALJPO, 81), cost effectiveness must not be considered in a vacuum. The Commission must also consider the cost of electric service. If the cost of electric service was not to be considered when evaluating the programs and measures, then the legislature would not have required the utilities to provide to the IPA “[a]nalysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of electric service.” 220 ILCS 5/16-111.5B(a)(3)(D). (emphasis added) Further, if the cost of electric service was not to be considered when deciding whether to approve or not approve energy efficiency measure and programs as part of the IPA plan, then the legislature would not have included in the standard for approval of the IPA Plan that the plan ensure “electric service at the lowest total cost over time”. 220 ILCS 5/16-111.5(d)(4) (emphasis added) The ALJPO, by failing to take into account the above relevant sections of the PUA and their reference to electric service, fails to carry out the legislatures’ intent to include in IPA plans only those energy efficiency programs and measures which reduce the cost of electric service, i.e. produce electric savings. The overriding goal of interpreting any statute is to ascertain and effectuate legislative intent. Barnett v. Zion Park District, 171 Ill.2d 378 (1996). The best evidence of the legislature’s intent is the language of the statute, which must be given its plain and ordinary meaning. People v. Fink, 91 Ill.2d 237, 239 (1982). In determining the plain meaning of a statutory provision, statutory words and phrases should not be considered in isolation. Relf v. Shatayeva, 2013 IL 114925, ¶123 (2013). A court must not focus on a single sentence or phrase in a statute. Italia Foods, Inc. v. Sun Tours, Inc., 2011 IL 110350, ¶12 (2011). Rather, a court should consider the statute in its entirety, including

the subject the statute addresses, and the apparent intent of the legislature in enacting the statute. Hayashi v. Illinois Dept. of Financial and Professional Regulation, 2014 IL 116023, ¶16 (2014); In re N.C., 2013 IL App (3d) 120438, ¶15 (2013). No part of the statute should be rendered meaningless or superfluous. Skaperdas, 2015 IL 117021, ¶15.

Also, despite the ALJPO's claim to the contrary, Staff did in effect provide "a definition of when a program would not be primarily focused on electric savings." (ALJPO, 80.) Staff's definition was identified in its Response, when Staff agreed with the secondary test supported by the NRDC to address the issue of cross subsidization. (Staff Response, 11-13.) The NRDC proposed and Staff agreed that the electric-only Utility Cost Test ("UCT") rather than the Total Resource Cost ("TRC") test which included only electric savings would be the appropriate test. Id. at 12. Staff agreed with the NRDC that "the UCT is a more rational test because it compares only what electric ratepayers would spend to all the benefits they would receive." Id. In summary, the AG, Ameren, NRDC and Staff all agree that the electric-only UCT should be utilized. (Ameren Reply, 18.)

Finally the ALJPO states that "[a]pparently, the COS provided by ComEd is consistent with past practice and, indeed, is the same type of COS provided by Ameren up until last year's plan." This is an assumption made by the ALJ, which Staff disagrees with, and, more significantly it is not based upon the record in this proceeding. Since this statement is not based upon the record in this proceeding, it must be stricken from the ALJPO. Based upon the above, Staff recommends the following changes to the ALJPO.

Recommended Substitute Language

(ALJPO, 80-81.)

Commission Analysis and Conclusion

The question here is whether the Commission should approve as part of a procurement plan ~~has the authority to exclude~~ adual-fuel programs that passes at the TRC test from a procurement plan but do not reduce the overall cost of electricity service, and if so, how that judgment be exercised. The Commission agrees with Staff's and Ameren's position that the IPA Plan should only include energy efficiency programs and measures that are predominantly justified based upon reducing the overall costs of electric service. The two dual-fuel programs that Ameren recommends not including in the 2017 Plan are discussed below, in Sections V.G. and V. H. of the Order.

As discussed in the *2016 Plan Docket*, the Commission approves cost-effective programs and measures to the extent practicable and the Commission has the authority to use its judgment to set practical limits on the procurement of energy efficiency. *2016 Plan Docket*, Order at 100. ~~Generally speaking, if an energy efficiency program passes the TRC, it should be included in the procurement plan. Staff and Ameren argue that programs that are not primarily focused on electric savings should not be included in procurement plans. Staff Without having been provided a clear definition of when a program would not be primarily focused on electric savings, the Commission will consider dual-fuel programs on a case-by-case basis. The Commission agrees with Staff, AG, Ameren and NRDC the parties that in exercising this judgment, that the best measure for guiding its determination of whether cross-subsidization exists is the UCT because it only compares what electric ratepayers would spend to all the benefits they would receive. For the most part, the Commission agrees with the IPA that if a program passes the TRC, it should be included in the procurement plan.~~

While the Commission agrees that the UCT will best inform the Commission regarding cross-subsidization, the Commission acknowledges the parties' discussion regarding the COS. The Commission sees no reason for the COS provided by Ameren and ComEd to differ. ~~Apparently, the COS provided by ComEd is consistent with past practice and, indeed, is the same type of COS provided by Ameren up until last year's plan.~~

The Commission agrees with Ameren that the reason for the PUA's inclusion of the comparison of the cost of procuring additional cost-effective energy efficiency measure to the prevailing cost of comparable supply is because the IPA's function is to procure supply. See *generally* 220 ILCS 5/16-111.5. The IPA does not procure transmission or distribution. The Commission further agrees that that is why Section 16-111.5B(a)(3)(G) requires the utilities to provide "[f]or each expanded or new program, the estimated amount that the program may reduce the agency's need to procure supply." 220 ILCS 5/16-111.5B(a)(3)(G). And this is why the PUA requires a comparison to the "cost of [the] comparable supply" which the IPA will no longer need to procure. 220 ILCS 5/16-111.5B(a)(3)(E). Ameren Rep. at 17. The IPA uses the assessments provided to prepare a procurement plan for Commission approval. 220 ILCS 5/16-111.5B(4). While t~~The Commission agrees with the IPA, however, that the statute's directive to directs the Commission differs and the Commission is required to "approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-~~

effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.” (220 ILCS 5/16-111.5B(a)(5)) cost effectiveness cannot be looked at in a vacuum. The Commission must also consider the cost of electric service. The differences between ComEd’s and Ameren’s approaches to calculating the COS are not fully explained, thus the Commission cannot say which COS is appropriate. This should be discussed in the SAG and if no resolution is reached, the parties can raise this issue in next year’s docket with a more fully developed record regarding the differing approaches by the utilities.

C. Exception 3, Demand Based Ventilation Control Program [Section 9.5.4.2]

Argument

The ALJPO correctly concludes that the demand-based ventilation control program will no longer be included in the 2017 Plan. (ALJPO, 82.) While Staff supports the ALJPO’s conclusion to exclude the demand-based ventilation control program from the 2017 Plan, Staff believes that some of the statements concerning the exclusion are not accurate, and thus clarification edits are warranted. Further, Staff believes that a substantive basis to exclude the program from the 2017 Plan should be added.

First, the ALJPO states that “this program will be included in Ameren’s Section 8-103 and Section 8-104 energy efficiency program.” (ALJPO, 82.) Technically, this statement is inaccurate because an identical demand-based ventilation control program as bid is not contained in Ameren’s Section 8-103 and 8-104 energy efficiency plan, rather demand-based ventilation control measures appear within Ameren’s Section 8-103 and 8-104 Small Business Direct Install and Business Standard programs. Ameren provided an analysis of the demand-based ventilation control program using the Commission’s seven-factor duplicative test to support its conclusion that the program is duplicative. (Ameren Objections, 14-16.)

Second, the ALJPO states that “the demand-based control ventilation program is no longer an issue because the parties to Docket No.16-0413 have reached an agreement.”

(ALJPO, 82.) Regardless of whether the parties to Docket No. 16-0413 have reached an agreement, all the parties in the instant proceeding have not reached an agreement concerning this program, and thus, the ALJPO should be revised to reflect that fact. For example, while the IPA acknowledges the vendor of this program was flagged as a potential performance risk and further “concedes” that the demand-based ventilation control program may prove to be “duplicative” of a program proposed by Ameren Illinois in its Section 8-103 filing, the IPA appears to continue to recommend that the Commission conditionally approve this program. (IPA Response, 15.) Staff disagrees with the conditional approval that the IPA advocates, and thus, there is a dispute for the Commission to resolve in this proceeding concerning the demand-based ventilation control program. Staff opposes the IPA’s proposed conditional approval of the demand-based ventilation control program for the reasons set forth below and those set forth in Staff’s Objections that are incorporated herein by reference for the sake of brevity (Staff Objections, 15-16).

The IPA’s positive Total Resource Cost (“TRC”) test results for the demand-based ventilation control program are unreliable as they are based upon projected performance levels that are inconsistent with the vendor’s past performance in Illinois. (Staff Objections, 15-16.) As a result and without having convincing information to lead to belief of significant improvements, they should not be the basis for acceptance of this program. Ratepayers should not be forced to pay for any more administrative costs associated with having Ameren contract with this vendor who has historically failed to perform in Illinois. The demand-based ventilation control program is not cost-effective once reasonable input assumptions are utilized consistent with past performance, and thus, the program should be excluded from the Plan. (Staff Objections, 15-16.)

While the IPA explicitly acknowledges this vendor was flagged as a potential performance risk in the ComEd and stakeholder bid review process (Plan, 117) and the IPA and the ALJPO support exclusion of this vendor's program in the ComEd service territory (Plan, 126; ALJPO, 100), the IPA nevertheless proposes that this program be conditionally approved by the Commission for implementation in the Ameren service territory. However, the IPA never addresses how conditional approval of such performance risk program which presents substantial risks for not meeting savings goals satisfies the legal requirement that approval of programs must represent "achievable" cost-effective savings. 220 ILCS 5/16-111.5B(a)(5). Clearly the designation of this program as a performance risk program does not satisfy the requirement that the savings from the program is actually "achievable." There is no evidence in this proceeding that demonstrates the savings goal assumed for the "performance risk" demand-based ventilation control program is actually "achievable" and satisfies the requirement of Section 16-111.5B(a)(5) of the PUA. Accordingly, the Commission should explicitly decline to conditionally approve this "performance risk" demand-based ventilation control program, since it has not been shown that the program has achievable savings and is actually cost-effective due to the flawed TRC analysis.

Finally, based upon historical performance, Staff concurs with Ameren's comments noting that "[w]hile this program vendor appears to be a performance risk, AIC notes that it believes the program design contemplated in its Plan 4 will be successful with a different implementer and an expanded target market including larger customers." (Ameren Objections, 15.) Staff concludes that ratepayers will be better off by having Ameren's Section 8-103 and 8-104 programs more comprehensively serve the market for this program. Accordingly, the Commission should adopt Staff's proposed language changes

related to this program and the Commission should explicitly decline to conditionally approve this “performance risk” demand-based ventilation control program.

Recommended Substitute language

(ALJPO, 82.)

Commission Analysis and Conclusion

The Commission declines to conditionally approve the inclusion of the demand-based ventilation control program in the 2017 Plan. The Commission finds that this program should be excluded from the 2017 Plan because it is a significant performance risk and it has not been shown that the savings projected by this vendor are actually “achievable.” Moreover, the Commission notes that Staff states that the demand-based ventilation control program is not cost-effective once reasonable input assumptions are utilized consistent with past performance, and thus the program should be excluded from the Plan. The Commission agrees with Staff that ratepayers should not be forced to pay for any more administrative costs associated with having Ameren contract with this vendor who has historically failed to perform in Illinois. In addition, even if the program were cost-effective, the Commission is convinced by Ameren’s analysis of the seven-factor duplicative test that the program is in fact duplicative of Ameren’s Section 8-103 and 8-104 Small Business and Business Standard programs that contain demand-based ventilation control measures. Furthermore, the Commission notes that Ameren states that while this Section 16-111.5B program vendor appears to be a performance risk, Ameren believes the program design contemplated in its Plan 4 will be successful with a different implementer and an expanded target market including larger customers. For these reasons, the Commission does not approve this demand-based ventilation control energy efficiency program because it is not clear that it will “fully capture the potential for all achievable cost-effective savings, to the extent practicable.” 220 ILCS 5/16-111.5B(a)(5). ~~It appears that the demand-based control ventilation program is no longer an issue because the parties to Docket No. 16-0413 have reached an agreement. Accordingly, this program will be included in Ameren’s Section 8-103 and Section 8-104 energy efficiency program and it will no longer be included in the 2017 Plan.~~

D. Exception 4, Duplicative Programs [Section 9.5.5]

Argument

The ALJPO adopts the resolution reached by the parties in Docket No. 16-0413 related to the Ameren small business program. (ALJPO, 91.) Staff supports the ALJPO’s decision. However, the ALJPO summary of the resolution reached in Docket No. 16-0413

is not technically accurate. In particular, the ALJPO states that the resolution is to “treat the SBDI Program as an expansion of Ameren’s Section 8-103 SBDI Program.” (ALJPO, 91.) The resolution reached by the parties is that *several* of the Section 16-111.5B small business programs – namely, GDS, 360 Energy, and Franklin Energy – would be treated as an expansion of Ameren’s Section 8-103 SBDI Program. (Ameren Reply, 21.) Accordingly, to avoid creating an inconsistency with ICC Docket No. 16-0413, the Commission should adopt Staff’s proposed language modifications to accurately reflect the resolution reached by the parties in Docket No. 16-0413.

Recommended Substitute language

(ALJPO, 91.)

Commission Analysis and Conclusion

Due to the stipulation in Docket No. 16-0413, it appears that there is no longer a dispute regarding the SBDI program. The Commission adopts the resolution reached by the parties to treat the GDS, 360 Energy, and Franklin Energy SBDI Programs as an expansion of Ameren’s Section 8-103 SBDI Program.

E. Exception 5, ComEd Identification of “Performance Risk” [Section 9.6.5]

Argument

Staff supports the ALJPO’s conclusions related to addressing appropriate performance risk benchmarks through SAG workshops. (ALJPO, 100.) Nevertheless, Staff proposes language to add to the summary of Staff’s Position section to ensure the Order provides the entire rationale for Staff’s recommendation that the Commission ultimately adopts. Additionally, Staff recommends adding language containing the rationale for the decision to the Commission Analysis and Conclusion section. Staff also suggests certain clarification edits to more fully explain the issue.

Recommended Substitute language

(ALJPO, 99-100.)

Staff's Position

* * *

Staff is also concerned that locking in such a low bar does not incent vendors to accurately forecast their expected savings. In particular, vendors currently have an incentive to overstate achievable savings bid into program submittals in order to pass the TRC test. A low bar of needing to meet only 5% of proposed savings goals may provide the impression to bidders that proposing realistic savings goals in their bid submittals is not something of value. Staff notes that this concern about overstating achievable savings is not a hypothetical one. Numerous bids have proven to be overstated. The low bar adopted in this Plan, if relied upon for use in future bid reviews, may exacerbate this current problem in future bid submittals. Thus, Staff respectfully requests the Commission approve this approach for purposes of the 2017 Plan, but direct the non-financially interested SAG parties to address this issue further following Commission approval in order to determine what might be an appropriate benchmark(s) to use in future years' bid review processes. Staff Cmnts. at 20-21.

* * *

Commission Analysis and Conclusion

The Commission approves Staff's request that the Commission approve the two-step approach for identifying potential performance risk based upon past performance and excluding such performance risk programs for purposes of the 2017 Plan. The Commission notes that vendors proposing realistic savings goals in their bid submittals is of value to this Commission and is critically important given the statute's directive that the Commission shall ensure the programs included in the Plan fully capture the potential for all "achievable" cost-effective savings, to the extent practicable. 220 ILCS 5/16-111.5B(a)(5). Accordingly~~In addition~~, the Commission directs the non-financially interested SAG parties to address this performance risk issue further following Commission approval in order to determine what might be an appropriate benchmark(s) to use in future years bid review processes. Moreover, the Commission agrees with the IPA that SAG should address a single approach which will be applicable to both utilities.

F. Exception 6, ComEd Programs Recommended for Approval [Section 9.6.8]

Argument

Staff's position is that the Commission should direct the IPA to exclude the Middle School Energy Education Campaign Program and the Low Income Multifamily Retrofits Program from the IPA Plan, since they are expected to increase the cost of electric service. (Staff Objections, 19.) Ameren agrees with Staff. (Ameren Reply, 25.) The ALJPO rejects Staff's and Ameren's position. (ALJPO, 103-104.) As discussed above with reference to Section 9.5.4, the ALJPO loses sight of the overall purpose of this proceeding. As a result, this again causes the ALJPO to err in interpreting the relevant law. As discussed in Exception 2 [Section 9.5.4] above, while the ALJPO cites to Section 16-111.5B(a)(5) of the PUA and its reference to cost-effective savings to support its conclusion accepting all energy efficiency programs with TRC's greater than 1.0, cost-effectiveness must not be considered in a vacuum. The Commission must also consider the cost of electric service. Both programs have UCT's below 1.0. (Staff Objections, 18.) As discussed in Exception 2 [Section 9.5.4] above, even though the programs have TRC's above 1.0, the UCT below 1.0, which is provided to satisfy Section 16-111.5B(a)(3)(D) (Staff Reply, 10), indicates that the programs are expected to increase the cost of electric service. (Staff Objections, 19.) Accordingly, both programs are expected to increase the cost of electric service.

Finally, Section 5/16-111.5B(a)(5) does not require "all" cost-effective energy efficiency programs and measures to be included in a procurement plan. That section only states that for those energy efficiency programs and measures included in the procurement plan they shall be included in the procurement plan "if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable,

and otherwise satisfy the requirements of Section 8-103 of this Act.” Put another way, cost-effectiveness is a necessary condition, but not the sole condition, for inclusion in a procurement plan, and statutorily-mandated Section 16-111.5B(a)(3)(D) cost of electric service analysis showing these programs would serve to increase the cost of electric service should be relied upon. Based upon the above, the Commission should remove both programs from the Plan.

Recommended Substitute language

(ALJPO, 103-104.)

Commission Analysis and Conclusion

Staff proposes and Ameren agrees that ERC’s LIMEP program be excluded from the 2017 Plan because its UCT score is 0.95, just below the 1.0 score necessary for a program to reduce the overall cost of electricity. The UCT is provided to satisfy Section 16-111.5B(a)(3)(D). While ~~t~~The LIMEP program scored a 1.65 on the TRC test the program is expected to increase the cost of electric service. The Commission notes, again, the applicable statutory language regarding the Commission’s role in approving energy efficiency programs. It states:

[p]ursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.

~~220 ILCS 5/16-111.5B(a)(5). However, cost effectiveness cannot be looked at in a vacuum. The Commission must also consider the cost of electric service. In general, therefore, the Commission must approve cost-effective programs, i.e., those that pass the TRC. The Commission has found that it has some discretion in the approval of energy efficiency programs based upon the qualifier “to the extent practicable” which is included in the statutory language. With this understanding, the Commission cannot adopt Staff’s position which seems to propose a bright-line test based on the UCT and would essentially ignore the results of the TRC.~~

~~It is clear to the Commission that ERC’s LIMEP program will provide many benefits, which are not captured in the UCT test. The Commission notes that this program is designed to lower the bills of low income households, which will reduce the number of households that are unable to make monthly energy payments and thereby~~

~~reduce the utility's uncollectible expense.~~ For these reasons, and because the LIMEP program fails to satisfy Section 16-111.5B(a)(3)(D), the Commission finds that this LIMEP cost-effective program should not be included in the 2017 Plan.

Although the bidder of the Middle School Energy Education program~~jeet~~ did not intervene in this proceeding, the Commission notes that even though its TRC score was even higher than the LIMEP at 1.78 ~~and it had the same 0.95 UCT score. That score indicates that it is expected to increase the cost of electric service. Accordingly, for the same reasons set forth above, including that this program fails to satisfy Section 16-111.5B(a)(3)(D), this program is also removed from the 2017 Plan. No further discussion was provided by the parties regarding this program, and the Commission will not remove this cost-effective program from the 2017 Plan either.~~

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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November 21, 2016

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